TRADE UNIONS AND TRADE DISPUTES IN ENGLISH LAW.

No subject at the present time excites more discussion among thoughtful people in England than that of the relation of capital and labour. It is not, however, from the economical and social side, but from the legal side, that I propose to view the question, avoiding as far as possible discussion of the economic effects and merits of recent legislation or legislative proposals—subjects which are still matter of acute controversy.

At common law a trade union was an unincorporated association of persons who were bound together by their having agreed to abide by its rules and were joint owners of the property of the union as the members of a club are of the club property.[1] Generally speaking they had two main objects: namely trade purposes and benevolent purposes. In so far as their purposes were benevolent they were in the nature of friendly societies, constituted to provide benefits for their members when out of work or incapacitated by sickness or old age. In those objects there was nothing unlawful. Among the usual trade purposes of a union of workmen was that of bringing about improvements in the conditions of labour and rate of wages. To combat these purposes so far as they were, or were thought to be, inimical to the interests of employers, unions of masters were formed.

Trade unions, whether of masters or of men, sought to attain their ends partly by diplomacy and negotiation and partly by the militant methods of strikes and lockouts. In so far as their rules provided only for the employment of bargaining and negotiation, without resort to illegal means, they were lawful associations. But the rules generally made provision for strikes, as the only effective means, in the last resort, of attaining their ends. Now a strike or lock out is not necessarily illegal. One man may refuse to work or to employ workmen, and any number of men in concert may refuse to work or to give employment otherwise than on certain terms; and they commit no offense and probably incur no legal liability by their refusal. But any

[1]The legal position of trade unions at common law is explained very clearly in the little work on "The Law Relating to Trade Unions" (1869) by Sir William Erle, Justice of the Court of Common Pleas, 1841; Justice of the Queens Bench, 1846; Chief Justice of the Common Pleas, 1859-1866.

agreement by which a person fetters his liberty to exercise his own judgment as to when, for whom, and on what terms, he will work or employ others is *prima facie* an unlawful agreement as being in restraint of trade. Accordingly, if the rules of the union provided that the members should be bound to strike or to close their works if, and whenever, called upon to do so by a majority of the members of a union or by an executive committee, a member, by agreeing to be bound by the rules, thereby entered into an agreement which was in restraint of trade. As every restraint of trade is *prima facie* unlawful, *i. e.,* is unlawful until it is shown to be reasonable, an unqualified rule compelling members to strike or lock out their workmen was necessarily unlawful and unenforceable. This principle was established in 1855 by the leading case of *Hilton* v. *Eckersley*[2] and has been re-asserted in several later cases.

Though since the passing of the Trade Union Act of 1871 the purposes of a trade union are not by reason merely that they are in restraint of trade unlawful, it is still sometimes necessary to consider whether the purposes of a trade-union are such that they would have been unlawful at common law, a question considered in several recent cases. In most, if not all, of these cases the question has arisen in connection with unions of workmen and it will be convenient to confine our attention to such unions, always remembering that the same principles are applicable to unions of masters.

The modern cases fall easily into two groups: (i) Those in which the purposes of the union were militant and were unlawful because by the rules the members bound themselves to strike whenever ordered to do so;[3] (ii) those in which the purposes were held to be not unlawful because they were mainly benevolent and there was no compulsory strike clause.[4] The inclusion among the benevolent objects of a rule for the payment of benefits to members on strike does not render the purposes unlawful. For a strike is not illegal, and there is nothing illegal in assisting and countenancing a strike, provided the members do not bind themselves by an agreement to strike.[5]

It is obvious that the rules of a trade union may impose on its

[2] 6 E. & B. 47.

[3] *E.g.* Russell *v.* Amalgamated Society of Carpenters [1910] 1 K. B. 506.

[4] *E.g.* Swaine *v.* Wilson (1889) L. R. 24 Q. B. D. 252.

[5] Gozney *v.* Bristol, etc. Trade and Provident Society [1909] 1 K. B. 901; Osborne *v.* Amalgamated Society of Railway Servants [1911] 1 Ch. 540.

members an unlawful restraint otherwise than by a compulsory strike rule. The effect of such a rule was considered in *Swaine* v. *Wilson*.[6] The society in that case was one founded mainly for benevolent purposes so that its general objects were not illegal. Among the rules were some by which a member was deprived of "out of work" benefit if he left a situation on account of a dispute with his master without the consent of the Committee of the Union and others which were intended to prevent a member "in work" from being deprived of his place by another member. It was contended that these rules were in unlawful restraint of trade. The Court of Appeal took the view that they were not unlawful in as much as they were made for the *bona fide* purpose of protecting the funds of the society from avoidable claims and did not impose a greater restraint than was reasonably necessary for that purpose and were not detrimental to the public.[7] But further it was held that if the general purposes were not unlawful the fact that some of the rules were in unlawful restraint of trade would not render the whole unlawful, but would only prevent the court from enforcing those which were unlawful, provided the two were not so intermingled as to be inseparable.

The principle of this case governs all trade unions of the Friendly Society type, whose objects are benevolent and whose rules, even though some may be in restraint of trade, are framed to carry out those objects and protect the funds of the society. It applies also to associations like that in *Collins* v. *Locke*[8] formed merely to prevent competition and regulate the distribution of work among its members, provided the restraint imposed is not more than is reasonably necessary for those purposes and is not detrimental to the public.

Unions of a militant type on the other hand nearly always have compulsory strike rules. The question may arise hereafter whether even a compulsory strike rule might not be so limited as regards the objects for the attainment of which a strike may be declared that it could be shown to impose no greater restraint than is reasonably necessary to protect the lawful interests of the members and not to be detrimental to the public, and so be not unlawful. But it is not likely that such a case will occur. A rule so limited would not be effective for the militant purposes of the union, and,

[6] (1889) L. R. 24 Q. B. D. 252.

[7] See Collins *v.* Locke (1879) L. R. 4 A. C. 674.

[8] *Ibid.*

as will be seen hereafter, it is rather an advantage than otherwise for a trade union to be one whose purposes would be illegal at common law. It suffers therefrom no detriment and the unlawfulness of its objects is sometimes available as a defence to actions brought against it.

At common law if the general purposes of a trade union (as distinguished from particular rules) were in unlawful restraint of trade not only could the courts not enforce agreements entered into by members by their assenting to the rules, but, as any trust for such objects was void, they could not successfully vest their property in trustees. They could only resort to the cumbrous and often ineffectual method of joint ownership with the attendant difficulties in enforcing their rights of property by civil or criminal proceedings.[9] With a fluctuating body of persons like a trade union it was very difficult to say in whom the property was vested at any moment. Thus an ordinary trade union formed for militant purposes was to a large extent outside the protection of the law. But it does not necessarily follow that there was anything criminal in membership.

There is nothing criminal about an association of persons for improving by lawful means the condition and terms of their employment and if an ordinary trade union formed to improve the conditions of labour was criminal it could only be so by reason of the means which its rules provided for effecting its objects. It was at one time much debated whether the mere fact that its rules made strikes compulsory and so operated in restraint of trade was sufficient to make a trade union a criminal association so that its members were indictable for conspiracy. The better opinion is that it never was so,[10] though there were weighty authorities to the contrary.[11] At any rate, the matter was set at rest by the Trade Union Act of 1871, which declares that:

"The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as

[9]A servant of the union who had embezzled the funds of the union was indictable for embezzlement, Reg. *v.* Stainer (1870) L. R. I. C. C. R. 230, but if a member of the union stole its property he could not be indicted for larceny as he was in law a joint owner of the property. Reg. *v.* Blackburn (1868) 11 Cox C. C. 157.

[10]See "The Law of Criminal Conspiracies and Agreements" by R. S. Wright, Justice of the Queens Bench Division (1891-1904) published in 1873 and Reg. *v.* Stainer (1870) L. R. I. C. C. R. 430.

[11]See for instance the opinion of Crompton, *J.*, in Hilton *v.* Eckersley (1855) 6 E. & B. 47.

to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise."[12]

In addition to the protection given by this Act there was passed in the same year an "Act to amend the Criminal Law relating to Violence, Threats and Molestation."[13] This Act was repealed in 1875 but re-enacted with substantial modification by the Conspiracy and Protection of Property Act, 1875, which provides that:

"An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime."[14]

The effect of this Act is to prevent prosecutions for conspiracy where the means employed in furtherance of a trade dispute are acts which would be only unlawful and not criminal if done by an individual. The Act of 1875 also repealed and re-enacted with variations an Act of 1826 which made punishable, the employment of intimidation, violence, or annoyance with a view to compelling any person to abstain from doing, or to do, any act which such other person has a legal right to do or to abstain from doing. These offences are defined with much precision.[15] Among them is that of picketing, that is watching or besetting a house or place where a person resides or works unless it is done "merely to obtain or communicate information."

The Trade Disputes Act, 1906,[16] has legalized what is called "peaceful picketing" by permitting watching and besetting if done merely for the purpose "of peacefully persuading any person to work or abstain from working." This apparently slight alteration in the law has had far reaching results and it is contended by many employers that "peaceful persuasion" inevitably results in intimidation and disorder. It has certainly introduced a new feature into trade disputes.

The Trade Union Act, 1871, however, did much more than alter the law of conspiracy. It began by enacting that:

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[12]35 Vict. c. 31.

[13]35 Vict. c. 32.

[14]39 Vict. c. 86.

[15]They include intimidating any workman or his wife or children, injuring his property, hiding his tools, following him about from place to place and watching or besetting the place where he resides or carries on work. The punishment is three months hard labour on summary conviction.

[16]6 Edw. VII. c. 47.

"The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust."

But for the qualifying section which follows, this would have abolished the whole doctrine of restraint of trade as applicable to trade unions, and have put them upon exactly the same footing as clubs or associations formed for lawful purposes. But it is provided by section four that nothing in the Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing what we may call the domestic agreements entered into by members of the union as such. These unenforceable agreements include: (i) agreements between members of a trade union as such concerning the conditions on which any member shall or shall not employ or be employed; (ii) agreements for payments of subscriptions or penalties to the union; and (iii) agreements for the application of the funds of a union to provide benefits for members. Now it results from this proviso that to any action instituted with the object of directly enforcing any of the specified agreements it is a good defence that the purposes of the trade union would have been unlawful at common law; but to an action instituted with any other object that defence is no longer available. Accordingly, the defence that its objects are such that they would have been unlawful at common law as being in restraint of trade is frequently pleaded by trade unions to actions brought against them or their officers to enforce payment of benefits provided for by the rules.

In all these cases the courts have refused to entertain actions instituted for any of the objects specified in section four if the union is one formed for militant purposes with compulsory strike rules[17] but has entertained the action where there are no such rules and the society is merely a benefit society, even though strike pay is included in the benefits provided.[18] Section four of the Act of 1871 only prevents the courts from entertaining actions brought with the object of directly enforcing or recovering damages for the specified agreements. Hence an action which is brought directly for some other object may be entertained even though in-

[17]Hornby *v.* Close (1867) L. R. 2 Q. B. 153; Russell *v.* Amalgamated Society of Carpenters [1910] 1 K. B. 506, [1912] A. C. —; Baker *v.* Ingall [1912] 3 K. B. 106.

[18]Swaine *v.* Wilson (1889) L. R. 24 Q. B. D. 252; Gozney *v.* Bristol Trade and Provident Society [1909] 1 K. B. 901; See Osborne *v.* Amalgamated Society of Railway Servants [1911] 1 Ch. 540.

directly it may result in the enforcing of one of the specified agreements. Accordingly the courts will grant an injunction restraining a trade union from applying its funds to objects other than those provided for by the rules, or which cannot lawfully be provided for by the rules, even though by so doing they may be indirectly enforcing an agreement for the application of the funds of the union to provide benefits for members.[19]

The application of this principle has recently had important political results. In 1902 a body called the Labour Representation Committee was formed for the purpose of establishing a distinct labour party in Parliament and many trade unions (among them the Amalgamated Society of Railway Servants) became affiliated to the Committee. The Society of Railway Servants then made a new rule by which each of its members was required to pay a small annual sum to a parliamentary fund which was to be used for providing for the representation of railway men in Parliament and for making contributions to the Labour Representation Committee. All candidates for Parliament supported by the society were required to sign and accept the conditions of the labour party and be subject to their whip and when elected they were to receive from the Society a salary of £250 a year and travelling expenses so long as they remained members of Parliament.

Osborne, a member of the Society, though now famous, objected to the application of the funds of the union for securing parliamentary representation and brought an action against the society and its trustees asking for an injunction on the ground that the rules providing for the payment of the funds for these purposes were *ultra vires*. The Court of Appeal[20] gave judgment for the plaintiff on the ground that it is not competent to a trade union to include among its objects something so wholly distinct from the objects contemplated by the Trade Union Acts as a provision to secure or maintain parliamentary representation. This was put on three grounds: (i) that such purposes were altogether outside and foreign to the purposes of trade unions as defined by the Trade Union Acts of 1871 and 1876; (ii) that it is contrary to public policy to compel a member of a union to subscribe to a party with whose tenets he may not agree; and (iii) that the members elected would be in effect paid delegates bound by

[19] Thus a trade union has been restrained from misapplying part of its funds by paying strike pay in cases not authorized by the rules. Yorkshire Miners Assn. *v.* Howden [1905] A. C. 256.

[20] [1909] 1 Ch. 163.

the terms on which their salaries were payable to vote in a prescribed manner. This decision was affirmed by the House of Lords on the first ground. Most of the Law Lords abstained from expressing any opinion on the second and third grounds. Those who did express any opinion did not dissent from the opinion expressed in the Court of Appeal.[21]

In consequence of his successful action against the Society of Railway Servants the society expelled Osborne from membership. Osborne then brought an action claiming a declaration that he was wrongfully expelled and an injunction restraining the society and its officers from acting on the resolution of expulsion. In this action also he was successful, the Court of Appeal holding that, assuming the purposes of the society were illegal at comomn law as being in restraint of trade, the action was not instituted with the object of directly enforcing any of the agreements specified in section four of the Act of 1871.[22]

The decision in Osborne's first case put the labour party in a difficult position. It was followed by numerous other actions brought for restraining other unions from applying their funds to the purposes of securing parliamentary and municipal representation.[23] There was also a vigorous agitation for getting rid of the decision by legislation and a bill with that object is now before parliament. Meanwhile the government with a view to relieving the difficulties of the Labour Party has instituted payment of members, every member of Parliament now receiving from the Treasury a salary of £400 a year. This does not wholly satisfy the Labour Party as they require funds for fighting elections, parliamentary and municipal, and many of the officials are politicians of advanced views who think the interests of labour are best served by using the unions as political organizations and exercising through them a direct control over the labour members in Parliament. Whether the "Osborne Case Judgment Bill" (as it is popularly called) will receive the sanction of Parliament remains to be seen.

The Trade Union Act, 1871 (as amended by an Act of 1876) gave trade unions a quasi-corporate character by enabling them to be registered and (if registered) to own, through the medium of trustees, a limited amount of real estate and unlimited personal es-

[21] [1910] A. C. 87.

[22] [1911] 1 Ch. 540.

[23] The principle was held to be applicable to the promotion of candidates at municipal elections in Wilson *v.* Amalgamated Society of Engineers [1911] 2 Ch. 324.

tate for the use and benefit of themselves and their members. It also made provision for the protection of their property and the accountability of their officers and trustees and for the distribution of their funds on a winding up. Trade unions, however, even when registered, are not incorporated. There is no express provision in the acts that they may sue and be sued in their registered name; but it is provided that the trustees may in their own names bring or defend any action touching or concerning the property right or claim to property of the trade union. This provision would no doubt apply to an action for a tort committed by the union touching the property of the union as, for instance, in building on their land so as to obstruct an easement of light or in so using their land as to cause a nuisance. But the Act is silent as to the liability of trade unions for other torts, such as libels or assaults committed by their agents.

During the thirty years following the passing of the Act of 1871 there had been a series of cases arising out of trade disputes in which actions were successfully brought against individual members of unions for procuring breaches of contracts of service and for trade molestation.[24] Now it is obvious that in course of many trade disputes torts of this kind are committed. Inducing workmen to break their contracts of service, coercing masters into not employing blacklegs, inducing strike breakers by intimidation not to enter into contracts of service, are, if not necessary concomitants, at least common accompaniments, of strikes; moreover, these things are often done by agents of a trade union and in obedience to the orders of its officials. The agents are generally men of little substance whereas the unions are often very wealthy, and if the unions could be sued for damages for torts committed by their agents there would be a chance of recovering damages commensurate with the injury suffered.

Until September 1900, however, it seems to have been tacitly assumed that a trade union could not be sued at all by name in its quasi-corporate character, nor could its funds be made answerable by suing the trustees for torts of these kinds committed by its agents. In August of that year a strike broke out among the servants of the Taff Vale Railway Company. The Amalgamated Society of Railway Servants (a registered trade union) took an

[24] Among the best known are: Bowen *v.* Hall (1881) L. R. 6 Q. B. D. 333; Temperton *v.* Russell [1893] I. Q. B. 715; Allen *v.* Flood [1898] A. C. 1; Lyons *v.* Wilkins [1899] 1 Ch. 255; Quinn *v.* Leathem [1901] A. C. 495.

active part in the strike, and in consequence of the annoyance suffered by the company from the picketing of its premises the company brought an action against the union and some of its officials claiming an injunction restraining them, their servants, and agents from watching or besetting the premises of the company for the purpose of persuading persons from working for the plaintiffs and from procuring persons who had entered into contracts with them to break their contracts. A summons was taken out by the Society to strike out their name as defendant on the ground that it was neither a corporation nor an individual and could not be sued in a quasi-corporate or other capacity. Farwell, *J.*, at chambers, after a careful examination of the whole subject, refused to strike out the Society and granted an injunction against it as asked. The Court of Appeal reversed his decision; but the House of Lords unanimously reversed the Court of Appeal and restored the decision of Farwell, *J.* The head note of the report in the Law Reports[25] of this momentous decision is as follows: "A trade union registered under the Trade Union Acts, 1871 and 1876, may be sued in its registered name"
and the *ratio decidendi* is, shortly stated, that as the legislature has given to a registered trade union, which is neither a corporation nor a partnership nor an individual, a capacity for owning property and acting by agents, such capacity, in the absence of express enactment to the contrary, involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents.

The *Taff Vale Case* caused consternation among trade unionists. It was followed by a number of actions in many of which unions were cast in heavy damages. There was hardly a trade dispute of any magnitude in which a union had not by its agents induced its members or other workmen to break their contracts of employment or by intimidation procured masters to dismiss workmen or workmen not to enter into contracts with masters. It resulted that trade unions were hampered in their work by fear of the consequences of too active participation in trade disputes. There was at once an agitation for legislation to get rid of the decision and this agitation resulted in the passing of the Trade Disputes Act of 1906.

[25]Taff Vale Railway Co. *v.* The Amalgamated Society of Railway Servants [1901] A. C. 426.

That Act not only overrides the *Taff Vale Case* but also strikes at *Lumley* v. *Gye*[26] and *Quinn* v. *Leathem*.[27] The fourth section enacts that

"An action against a trade union * * * in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court."[28]

There is only one express exception to this sweeping enactment *viz.*, that of actions against the trustees in respect of any tort concerning the property of the trade union, which may still be entertained unless such tort shall have been "committed by or on behalf of the union in contemplation or furtherance of a trade dispute." Thus if a trade union should obstruct an easement of light or commit a nuisance on its property "in contemplation or furtherance of a trade dispute" (an unlikely event) no action would lie against the union or its trustees as representing the union; but trade unions may still be sued for torts of this kind not committed in contemplation or furtherance of a trade dispute. And as regards all torts which do not touch or concern the property of the union (*e. g.* libels, assaults, malicious prosecution, procuring breaches of contract, or trade molestation) the exemption from liability is apparently absolute whether such torts are committed in contemplation or furtherance of a trade dispute or not. As Mr. Justice Darling has said:

"* * * * From the humiliating position of being on a level with other associations of his Majesty's subjects the Statute of 1906 has relieved all registered trade unions, and they are now *super legem*, just as the mediaeval Emperor was *super grammaticam*. * * *"[29]

This section has been considered recently by the Court of Appeal upon an application to strike out a statement of claim in an action brought against a trade union for libel and trade molestation.[30] The court suggested that some limitations will have hereafter to be read into the section, but held that in any case the sec-

[26](1853) 2 E. & B. 216.

[27]*Supra.*

[28]6 Edw. VII. c. 47.

[29]Bussy *v.* The Amalgamated Society of Railway Servants (1908) 24 Times L. Rep. 437.

[30]Vacher *v.* London Society of Compositors (1912) 28 Times L. Rep. 366. The application is equivalent to a general demurrer, the grounds of the application being that the statement of claim discloses no cause of action.

tion was not (as was argued by the plaintiffs) limited to torts committed in contemplation or furtherance of a trade dispute and that the action was not maintainable. Accordingly, they struck out the statement of claim and so put an end to the action as framed.

The Act of 1906 also gives protection to all persons in respect of certain torts when committed in contemplation or furtherance of a trade dispute. It provides that:

"An Act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other persons to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills."

The extent of this exemption has not yet been defined.[31]

To appreciate the effect of this section we must see what is the common law with regard to inducing breaches of contracts of employment and trade molestation. To put it shortly, without attempting precise definition, the law is: (i) It is actionable to induce a breach of contract if there is no justification and damage results.[32] The Act says that (as regards acts done in contemplation or furtherance of a trade dispute) this shall no longer be actionable. (ii) There is some doubt whether apart from the Act an action lies in any circumstances for only inducing a person not to enter into a contract of employment or to lawfully determine a contract of employment. *Allen* v. *Flood*[33] is sometimes thought to answer this question in the negative; but though there are *dicta* to that effect, it seems really only to decide that no action lies for merely warning or advising a person not to enter into a contract or to lawfully determine a contract. However that may be, the Act removes the doubt as affecting

[31] The meaning of the section was discussed in Conway *v.* Wade [1908] 2 K. B. 844, [1909] A. C. 506, an action brought by a workman against an official of a trade union claiming damages on the ground that the defendant had by threat of a strike induced his master to dismiss him. The only point decided was that there was evidence to support the finding of the jury that the acts complained of were not done in contemplation or furtherance of a trade dispute. "Trade Dispute" is defined by the Act as "any dispute between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises." The last words were added to cover the case of sympathetic strikes.

[32] Lumley *v.* Gye *supra.*

[33] [1898] A. C. 1.

trade disputes by enacting that merely to induce persons not to contract or to lawfully determine their contracts shall not, if done in contemplation or furtherance of a trade dispute, be actionable. (iii) There is at common law a cause of action for using threats, violence, or intimidation whereby a person's liberty to dispose of his labour or capital as he wills is interfered with, or whereby others are induced to break their contracts with him or not to deal or enter into contracts with him.[34] These causes of action are not touched in any way by section three of the Trade Disputes Act, which only applies to cases where inducing is the only ground of action.[35] It must be remembered, however, that by section four actions of this kind can no longer be brought against a trade union, but only against the wrongdoers personally.

The only other section of the Act of 1906 to which we need refer is the first. It has been much debated whether at common law an action for conspiracy will lie when two or more persons in combination with the design of causing, and actually causing, damage to another, do acts which would not be actionable if done by one person alone. In *Quinn* v. *Leathem*,[36] Lord Brampton[37] stated his view of the common law thus:

"It has often been debated whether, assuming the existence of a conspiracy to do a wrongful and harmful act towards another and to carry it out by a number of overt acts, no one of which taken singly and alone would, if done by one individual acting alone and apart from any conspiracy, constitute a cause of action such acts would become unlawful or actionable if done by the conspirators acting jointly or severally in pursuance of their conspiracy, and if by those acts substantial damage was caused to the person against whom the conspiracy was directed: my opinion is that they would."

Other expressions of opinion to the same effect have been made by eminent lawyers.[38]

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[34]Quinn *v.* Leathem *supra*; Read *v.* The Friendly Society of Operative Stonemasons [1902] 2 K. B. 732; Giblan *v.* National Amalgamated Labourers' Union [1903] 2 K. B. 600; Glamorgan Coal Co. *v.* South Wales Miners' Federation [1903] 2 K. B. 545; Garret *v.* Taylor (1621) Cro. Jac. 567; Tarleton *v.* M'Gawley (1764) 1 Peake N. P. C. 205.

[35]Conway *v.* Wade, *per* Lord Loreburn [1909] A. C. 506, 510.

[36][1901] A. C. 494, 529.

[37]Better known as Sir Henry Hawkins—a judge of the High Court 1876-1899.

[38]*E.g.* by Lord Lindley in Quinn *v.* Leathem *supra* and by Lord Justice Stirling in Giblan *v.* National Amalgamated Labourers' Union *supra*.

If this is the law, a conspiracy between A, B, and C to induce others not to work for D, resulting in damage to D, would be actionable even though A, B and C used no threats or intimidation and did nothing which would be actionable if done by one alone. Now by section three of the Act of 1906 it is not actionable for one person (in furtherance or contemplation of a trade dispute) to merely induce another to break a contract of employment or to merely interfere with the business or employment of another; and reading this with section one we get the result that it is not actionable for A, B, and C (in contemplation or furtherance of a trade dispute) to conspire to induce D's workmen to break their contracts of employment with him or to interfere with D's business and his liberty to employ his capital or labour as he will even though they have no justification for so doing and damage results to D. The conspiracy is only actionable if violence, threats, or intimidation are used and damage results.[39]

Thus the Trade Disputes Act has not only placed trade unions *super legem* but has given to all persons acting in contemplation or furtherance of a trade dispute immunities from civil and criminal proceedings which are denied to persons acting in furtherance of other objects, political, social, charitable or personal. The law has indeed changed since the day when a very learned judge[40] could say that he thought trade unions were

"illegal and indicable at common law as tending directly to impede and interfere with the free course of trade and manufacture."

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[39]The question as to what will justify inducing a breach of contract or the use of threats and intimidation was discussed in several of the cases. See especially the judgment of Collins, *M. R.* in Read *v.* The Friendly Society of Operative Stonemasons *supra*; Giblan *v.* National Amalgamated Labourers' Union *supra;* and Glamorgan Coal Co. *v.* South Wales Miners' Federation *supra.*

[40]Crompton, *J.*, in Hilton *v.* Eckersley (1855) 6 E. & B. 47, 53. The other judges who took part in the decision did not concur in this view.